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Supreme Court, U.S.
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No. 92-659

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

STEVEN L. EASLEY,
Petitioner,

v.

SOUTHERN SHIPBUILDING CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Respondent, Southern Shipbuilding Corporation, disagrees with Petitioner's statement of the questions presented for review. The questions presented for consideration are:

1. Whether summary judgment dismissing Petitioner's claim of negligence under § 905(b) of the LHWCA was appropriate, where there was no genuine issue of material fact and the United States Court of Appeals for the Fifth Circuit and the district court found that Petitioner, as a ship repairer/shipbuilder, was prohibited from bringing a negligence action under § 905(b) of the LHWCA?

2. Whether summary judgment dismissing Petitioner's Jones Act claim and general maritime law claims were appropriate, where no genuine issue of material fact existed and where the courts below correctly applied the proper legal standards concerning Petitioner's employment status?

LIST OF INTERESTED PERSONS AND RULE 29.1 CERTIFICATION

The parties to the proceeding below were Petitioner-Plaintiff, Steven L. Easley, Suzanne Easley (his wife), and Respondent-Defendant, Southern Shipbuilding Corporation.

Under this Court's Rule 29.1, Respondent, Southern Shipbuilding Corporation, certifies that it has no parent companies and no subsidiaries.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Southern Shipbuilding Corporation ("Southern"), submits that there is no basis for granting a writ of certiorari in this case. The district court was presented with the material undisputed facts and, based on those facts, together with the application of the appropriate law, granted summary judgments dismissing Petitioner's negligence actions brought under the Jones Act and 33 U.S.C. § 905(b). The court of appeals correctly determined that no reasonable fact finder could conclude that Petitioner was a Jones Act seaman, and that Petitioner was a ship repairer or shipbuilder limited to compensation remedies against his employer under the Longshore and Harbor Workers' Compensation Act ("LHWCA") 33 U.S.C. §§ 901, *et seq.* The decisions of the court of appeals and the district court neither raise any unsettled issues warranting this Court's attention,

nor conflict with any decision of this Court or any United States Court of Appeals. Petitioner has presented no compelling reason for granting certiorari to review carefully reasoned summary judgments completely supported by the controlling law. Petitioner's application for a writ of certiorari should, therefore, be denied.

STATEMENT OF THE CASE

Petitioner's statement of the course of proceedings and disposition below at pages 3-4 of his writ petition correctly recounts the procedural history of this case. In addition, the relevant facts, all of which are uncontested, are fully set forth in the decisions of the district court and the Fifth Circuit, which are reproduced as appendices to Easley's writ petition. However, Respondent restates the pertinent facts as follows:

A. The Undisputed Facts

Southern Shipbuilding Corporation operates a shipyard in Slidell, Louisiana, where it repairs and constructs vessels, in addition to performing salvage operations. Petitioner Easley, a 20-year employee with Southern, worked as a "mechanic" in the shipyard. His duties included repairing cranes and shipyard equipment, as well as cutting grass, working in the compressor room and maintaining Southern's drydock.

In earlier years, Easley had worked as a deckhand aboard Southern's vessels, but since 1987, at his own request, he was reassigned to the aforementioned duties as a land-based mechanic. However, at the time of his accident in May 1989, Easley was working on a one-day assignment as a temporary deckhand aboard one of his employer's vessels, the D/B SOUTHERN NO. 6. As Easley concedes at page 4 of his writ petition, of the total 159 hours he worked in the month before his accident, he spent only eight hours on a vessel, while spending the remaining 151 hours, or approximately 95% of his time, on land as a shipyard mechanic.

Although Easley styles himself as a "regular substitute deckhand" the undisputed facts established that he had worked aboard a vessel for only a single day at the time of his injury, that his deckhand duties were only sporadic and intermittent, and that he filled in only because permanent crewmembers were unavailable. Easley presented no evidence that his permanent job assignment as a land-based worker had changed in the two and one-half years preceding his accident, that his wage rate changed depending on the type of work he performed, or that he accounted for his time any differently for his minimal and random vessel-related work.

B. The District Court Proceeding

As Easley notes at page 3 of his petition for a writ of certiorari, he initially filed a negligence claim against Southern under the Jones Act. The district court granted Southern's motion for summary judgment, dismissing this claim on grounds that Easley was not a seaman. In its "Order and Reasons" entered on October 18, 1990, (*see* pages A-1 through A-3 of Easley's writ petition), the district court applied the two-part test for determining seaman status set forth in *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986) (*en banc*):

> In order to prove that he is a seaman, entitled to compensation under the Jones Act, the plaintiff must show that: (1) he was permanently assigned to a vessel or performed a substantial part of his work on a vessel; and (2) the capacity in which plaintiff performed contributed to the function of the vessel, its mission, its operation, or its welfare.

Writ petition, page A-2. Citing *Gizoni v. Southwest Marine, Inc.*, 909 F.2d 385 (9th Cir. 1990), which this Court later affirmed, the district court specifically stated that it would "look at the nature of the work actually done by the plaintiff and not his job titles" in deciding the motion for summary judgment. *Id.*

Applying this correct statement of law to the undisputed facts, the district court concluded that Easley's assignments to his employer's vessel were "intermittent and transitory," whereas "his permanent job assignment remained land-based." *See* writ petition, page A-3. Even accepting plaintiff's assertion that he had worked 11.5% of his time on a vessel, the court found that this temporary vessel assignment was not a regular and continuous change in his normal function as a mechanic in the shipyard. *Id.* Thus, even when viewed in a light most favorable to the plaintiff, the evidence could not reasonably lead to a conclusion that Easley was a seaman.

After the district court dismissed his Jones Act claim, Easley moved to amend his complaint to allege a claim in negligence under 33 U.S.C. § 905(b) and the general maritime law. Southern moved to dismiss this claim on grounds that Easley's sole remedy against his employer and its vessel was compensation under the LHWCA. Viewing the undisputed evidence again in the light most favorable to the plaintiff, the district court concluded that Easley's job of repairing cranes, working in the compressor room, and maintaining the drydock supported his employer's shipbuilding and ship repair business. Because Easley was thereby directly involved in shipbuilding and ship repair work, the court found him to be a shipbuilder or ship repairer barred by the express provisions of 33 U.S.C. § 905(b) from suing his employer or its vessel for damages. *See* district court's "Order and Reasons" entered on December 11, 1990 (reproduced at pages A-4 through A-6 of Petitioner's writ petition).

C. The Fifth Circuit's First Opinion

On July 30, 1991, the United States Court of Appeals for the Fifth Circuit affirmed the district court's rulings. *Easley v. Southern Shipbuilding Corp.*, 936 F.2d 839 (5th Cir.), *reh'g denied*, 943 F.2d 1315 (5th Cir. 1991) (*en banc*), reproduced at pages A-8 through A-20 of Easley's writ petition. Citing this Court's decision in

McDermott Int'l., Inc. v. Wilander, 498 U.S. ——, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991), the Fifth Circuit recognized that a maritime worker "cannot be both a seaman for Jones Act purposes and a longshoreman under the LHWCA." 936 F.2d at 842; writ petition, page A-13. The court of appeals then proceeded to analyze the undisputed facts and held that the district court had correctly found that Easley was a ship repairer covered by the LMWCA rather than a Jones Act seaman. The Fifth Circuit looked to both seaman-status cases under the Jones Act and "member of the crew" cases under the LHWCA and concluded:

> If we were to analyze Easley's assignment with respect to seaman status instead of longshoreman status, we would be forced to the same conclusion even accepting the plaintiff's argument that he was a "regular" substitute deckhand. Easley's sporadic and intermittent assignments to Southern's vessels simply were not substantial in the context of his employment. Moreover, with the exception of his occasional deckhand assignments, we see nothing in the record that would distinguish any of his activities as clearly non-ship repair . . . .

936 F.2d at 844-845; writ petition, page A-18. The Fifth Circuit therefore affirmed the summary judgments concluding that Easley was not a Jones Act seaman, but was a covered worker directly involved in the shipbuilding or repair process and thus precluded by 33 U.S.C. § 905(b) from asserting an action for negligence against his employer or its vessel. 936 F.2d at 845; writ petition, page A-19.

D. The Fifth Circuit's Second Opinion—The Opinion on Remand

On November 23, 1991, Petitioner applied to the United States Supreme Court for a Writ of Certiorari. This Court granted Petitioner's writ and remanded the case to the United States Court of Appeals for the Fifth

Circuit for further consideration in light of *Southwest Marine, Inc. v. Gizoni*, 502 U.S. ——, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991). On July 7, 1992, the Fifth Circuit affirmed, again holding that Petitioner was not entitled to bring a negligence action either as a seaman under the Jones Act or as a shipbuilder/ship repairer under § 905(b) of the LHWCA.

In its second opinion, the Fifth Circuit clearly stated that the portion of its first decision recognizing that a ship repairer was barred from bringing a negligence action under § 905(b) of the LHWCA against his employer remained correct and was not affected whatsoever by the *Gizoni* decision. *Easley v. Southern Shipbuilding Corp.*, 965 F.2d 1 (5th Cir. 1992), reproduced at pages A-24 through A-33 of Petitioner's writ petition. Accordingly, the Fifth Circuit affirmed the district court's holding and its own prior ruling that because Petitioner was a ship repairer within the meaning of the LHWCA, § 905(b) precluded him from bringing a negligence action against his employer or its vessel.

While the Fifth Circuit affirmed its prior ruling on this issue, its second opinion mistakenly cited a *pre*-1984 version of § 905(b) rather than the statute's *post*-1984 amendment version, which had been relied on by the district court and the Fifth Circuit in its original decision. Before the 1984 amendment § 905(b) prevented a ship repairer from asserting a negligence claim against his employer only if the injury were caused by the negligence of a fellow ship repairer or shipbuilder; thus, the status of the person who injured the ship repairer determined whether the ship repairer could maintain a § 905(b) negligence action against his employer. However, the 1984 amendment to § 905(b) *completely barred* a ship repairer from bringing a negligence action against his employer, regardless of the employment status of the person who caused the ship repairer's injury. This quotational error by the Fifth Circuit did not affect the correctness of its

holding that this petitioner, as a ship repairer, had no legally recognized negligence cause of action for a 1989 accident against his employer under 33 U.S.C. § 905(b).

The Court of Appeals also found upon reconsideration that Petitioner was not a Jones Act seaman. The Court held that while *Gizoni* required a different analysis than it had applied in its earlier decision, it did not lead to a different result. The Fifth Circuit's second decision was not, as Petitioner claims, based solely on the fact that Petitioner spent at most only eleven and a half percent of his time on a vessel (writ petition, page 6). Rather, following an analytical and well-reasoned opinion, the Fifth Circuit stated:

> [C]onsidering this circuit's *consistent precedent*, it is *impossible* for us to conclude that Easley, who spent at most eleven and a half percent of his time on a vessel, was a seaman for purposes of the Jones Act, *particularly when viewed in light of other factors affecting his connection with the subject vessel.* (Emphasis added).

965 F.2d at 5; writ petition, page A-33. Therefore, the Fifth Circuit found no reversible error in the district court's summary judgment holding that Petitioner was not a Jones Act seaman.

Accordingly, in its second decision, the Fifth Circuit again concluded that Petitioner was not entitled to bring a negligence action against his employer either as a seaman under the Jones Act or as a shipbuilder/ship repairer under § 905(b) of the LHWCA. It, therefore, found no reversible error and affirmed the district court's grants of summary judgment.

REASONS FOR DENYING THE WRIT

I. THE FIFTH CIRCUIT AND THE DISTRICT COURT CORRECTLY FOUND THAT PETITIONER, AS A SHIP REPAIRER OR SHIPBUILDER, WAS NOT ENTITLED TO BRING A NEGLIGENCE ACTION AGAINST RESPONDENT UNDER § 905(B) OF THE LHWCA.

The Fifth Circuit Court of Appeals in its first opinion and the district court on summary judgment correctly held that because Petitioner was a ship repairer or shipbuilder, his "recovery under the LHWCA is limited to compensation benefits to the extent he is eligible for them." 936 F.2d at 845; writ petition, page A-19; writ petition, page A-4. The undisputed facts clearly and unequivocally established that Petitioner was a ship repairer or shipbuilder for the purposes of the LHWCA. Consequently, the express terms of § 905(b) preclude Petitioner from asserting an action for negligence against his employer or its vessel. 936 F.2d 839; writ petition, page A-8; writ petition, pages A-1 through A-6. There is, therefore, no basis for a writ of certiorari on this issue.

The sole basis for Petitioner's first question presented for review is the Fifth Circuit's mistaken quotation to § 905(b) as it existed *prior* to the 1984 amendment. The Petitioner relies on the Fifth Circuit's statement in its second opinion that Petitioner, as a ship repairer for the purposes of § 905(b) of the LHWCA, was

> barred by the terms of that section from maintaining a negligence action against his employer, *assuming that "the injury was caused by the negligence of persons engaged in providing shipbuilding or repair services."*

965 F.2d at 4; writ petition, page A-28. (Emphasis added). Based on this mistaken quotation to the *pre*-1984 amendment version of § 905(b), Petitioner claims

the Fifth Circuit erred as a matter of fact when it concluded that:

> [B]ecause Easley's injury was caused by the negligence of persons engaged in providing shipbuilding or repair services, his claim against his employer, who was also the vessel owner, under the LHWCA, Section 905(b) is barred.

Petitioner's writ petition, page 6.

Petitioner's argument is flawed because the Fifth Circuit's second opinion, unlike its first opinion or the district court's decision, incorrectly quoted to § 905(b)'s language before the 1984 amendment to § 905(b). Section 905(b)'s *pre*-1984 amendment language allowed a ship repairer or shipbuilder to maintain a negligence action against an employer-vessel owner if an accident were caused by an employee who was *not* working as a ship repairer or shipbuilder. However, § 905(b) was amended in 1984 as follows:

> Subsec. (b). Pub. L. 98-426 § 5(a)(1), substituted 'If such person was employed to provide *shipbuilding, repairing*, or breaking services *and such person's employer was the owner*, owner pro hac vice, agent, operator or charterer *of the vessel, no such action shall be permitted*, in whole or in part or directly or indirectly, *against the injured person's employer* (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer' *for* 'If such person was employed by the vessel to provide shipbuilding or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing shipbuilding or repair services to the vessel.' (Emphasis added).

1984 U.S. Code Cong. & Admin. News 2734. Thus, the 1984 amendment to § 905(b) completely and unconditionally eradicated a ship repairer or shipbuilder's right to maintain a negligence action against his employer-

vessel owner, regardless of the status of the employee who caused an injury to the ship repairer or shipbuilder.

Because it is premised on an inaccurate legal citation, Petitioner's factual error argument lacks merit. Controlling law at the time of Easley's 1989 accident precludes this ship repairer from asserting any negligence action against his employer regardless of the status of the employee who caused his injury. As amended in 1984, § 905(b) clearly and without exception provides that a shipbuilder or ship repairer, such as Petitioner, is prohibited from bringing a negligence action against his employer-shipowner. It was Petitioner's employment status as a shipbuilder or ship repairer which unconditionally bars his claim against Respondent, *not* the employment status of those whose negligence allegedly caused Petitioner's injury. Consequently, considering the controlling law at the time of Petitioner's accident, whether Petitioner's alleged injury was caused by the negligence of a fellow shipbuilder/ship repairer or by a vessel crew member is irrelevant and immaterial.

The Fifth Circuit's quotation to the *pre*-1984 version of § 905(b) in its second opinion was harmless error. The Petitioner's rights clearly were governed by the 1984 amendment to § 905(b) that absolutely prohibited a ship repairer from asserting a negligence action against his employer. Thus, though its reference to the *pre*-1984 § 905(b) language was in error, the Fifth Circuit's conclusion in its second opinion was correct.

Importantly, the Fifth Circuit's original decision and the district court's decision on summary judgment applied the 1984 amendment version of § 905(b) as the controlling law and correctly concluded that Petitioner, as a ship repairer, had no § 905(b) negligence action against his employer. 936 F.2d 839, 845; writ petition, pages A-14 and A-19; and writ petition, pages A-4 through A-6. The lower courts' conclusion that this ship

repairer's exclusive remedy was compensation under the LHWCA was correct, and there is no basis for granting a writ on this issue.

II. THE FIFTH CIRCUIT AND THE DISTRICT COURT CORRECTLY CONCLUDED PETITIONER WAS NOT A JONES ACT SEAMAN AS A MATTER OF LAW.

Petitioner's second question presented for review, concerning seaman status, provides no valid reason for this Court to issue a writ. Petitioner is essentially asking this Court to overturn a proper summary judgment of dismissal, even though he can point to no error of law or any genuine issue of material fact that would warrant a trial on the merits. The issue of Petitioner's alleged seaman status was decided by the district court, affirmed by the Fifth Circuit Court of Appeals, and, upon reconsideration as instructed by this Court, reaffirmed by the Fifth Circuit on remand. 965 F.2d 1; writ petition, page A-24; 936 F.2d 839; writ petition, page A-8; writ petition, page A-1. In each decision of the courts below, after examining the undisputed facts and correctly applying controlling legal standards, it was determined that no reasonable fact finder could conclude that Petitioner was a Jones Act seaman. Furthermore, we note for the Court that in his second question presented for review, Petitioner basically reasserts the exact same argument made to this Court in the second question presented for review in his previous petition for a writ of certiorari on November 23, 1991. Now, as then, there is no merit to that argument.

Petitioner claims that the motion for summary judgment should have been denied because "there is much evidence to support a finding that [Petitioner] was, in fact, a seaman." *See* writ petition, page 10. Petitioner argues that "as the regular substitute deckhand aboard the D/B SOUTHERN No. 6 who was assigned to that ves-

sel for the length of its one day voyage he was entitled to present his claim of Jones Act seaman's status to a jury." *See* writ petition, page 9. Without more, those allegations do not satisfy the legal test for seaman status.

To qualify as a Jones Act seaman, Petitioner must prove that he was either *permanently* assigned to a vessel or performed a *substantial* part of his work on it. Petitioner clearly failed to meet either requirement. Petitioner admits that he was never "permanently" assigned to his employer's vessels, but only worked on them temporarily. His work aboard the D/B SOUTHERN NO. 6 was for only one day. *See* writ petition, pp. 4-5. Petitioner also did not perform a substantial amount of his work on vessels. As set forth in *Barrett v. Chevron, USA, Inc.*, 781 F.2d 1067, 1074 (5th Cir. 1979), to satisfy the requirement of "substantial work," the claimant must prove a relationship to a vessel "that is substantial in point and time and not merely spasmodic." In the present case, the Fifth Circuit, on remand, clearly addressed Petitioner's argument concerning his relationship to the vessel:

> Easley was not permanently assigned to the NO. 6; he was a land-based employee. Neither did he perform a substantial part of his work on the vessel. Clearly neither *Robison* nor *Wilander* and *Gizoni* envision a "snapshot" test for seaman status, inspecting only the situation as it exists at the instant of injury; a much more enduring relationship is contemplated in the jurisprudence. At least three cases in this circuit involved workers who spent greater percentages of their employment time on vessels than did Easley, yet the worker in each case was held not to be a seaman as a matter of law. (Footnote omitted). We do not imply that the quantum or percentage of a worker's time spent on a vessel in navigation is either the sole factor or the determinative factor in the search for seaman status. But considering this circuit's consistent precedent, it is impossible for us to conclude that Easley, who spent at most eleven and

> a half percent of his time on a vessel, was a seaman for purposes of the Jones Act, particularly when viewed in light of other factors affecting his connection with the subject vessel.

965 F.2d at 5; writ petition, pages A-32-33.

Petitioner ignores this established legal standard when he argues that he could not be covered by the LHWCA because he "was, in the words of his boss on the date of the accident, a deckhand assigned to the D/B SOUTHERN No. 6." *See* writ petition, pages 10 and 11. By arguing that he was working as a deckhand at the time of his accident, Petitioner contends he is legally entitled to seaman status based solely on a job title alone, rather than the totality and nature of the actual work he performed. This approach was expressly rejected in *Gizoni*, which teaches that the proper inquiry is whether the nature of the claimant's work makes him a sea-based employee instead of a land-based worker. Applying *Gizoni's* logic, the Fifth Circuit on remand concluded, based on undisputed facts, that Petitioner did not have a sufficient employment-related connection to a vessel in navigation to be considered a seaman:

> Irrespective of the traditional maritime nature of Easley's work on the occasions when he was aboard the NO. 6, the irregularity of his intermittent stints of short duration on that vessel, sporadically interspersed between long periods of performing his regular land-based functions, eschews the substantial and enduring relationship to the vessel envisioned in *Gizoni*, *Wilander*, and *Lawson*. Easley's connection to the NO. 6 was simply too attenuated to constitute seaman status.

965 F.2d at 5; writ petition, A-32. Thus, the Fifth Circuit correctly premised its second decision on this Court's legal test for seaman status.

Seaman status is properly decided on summary judgment in appropriate cases. In *McDermott Int'l., Inc. v.*

Wilander, 498 U.S. ——, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991), and *Southwest Marine, Inc. v. Gizoni*, 502 U.S. ——, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991), this Court held that the question of who is a "member of the crew" or "seaman" is "a mixed question of law and fact." Although the question of seaman status is necessarily fact-specific, this Court has recognized that "summary judgment or a directed verdict is mandated where the facts and the law will reasonably support only one conclusion." *Wilander*, 111 S.Ct. at 818, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 250-251 (1986). "When the underlying facts are established, and the rule of law is undisputed, the issue is whether the facts meet the statutory standard." *Wilander*, 111 S.Ct. at 818, citing *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982). If no genuine issue of material fact exists as to whether the worker was a seaman under the Jones Act, then a maritime worker employed by a shipyard is limited to LHWCA remedies. *Gizoni*, 112 S.Ct. at 492.

Considering this legal standard, the district court's summary judgment on seaman status was clearly correct. Applying this Court's mandate for deciding summary judgment motions enunciated in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), the district court and the Fifth Circuit (in both opinions) accepted as true Petitioner's assertions that he worked 11.5% of his time on the vessel, but necessarily found that his assignment to the vessel was "intermittent and transitory while his permanent job assignment remained land-based." *See* writ petition, page A-3. The Fifth Circuit found that "even accepting [Petitioner's] argument that he was a 'regular' substitute deckhand," Petitioner's "sporadic and intermittent assignments to Southern's vessels were simply not substantial in the context of his employment." 936 F.2d 844-845; writ petition, page A-18. Under these circumstances, summary judgment was not only consistent with this Court's jurisprudence, but was mandated by it. *See Celo-*

tex, 477 U.S. 317; *see also* Anderson, 477 U.S. 242; and *Matsushita Electric Industrical Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).[1]

The undisputed facts in this case, when viewed in the light most favorable to Petitioner, establish that Easley

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[1] As Respondent presented to this Court in its previous Brief in Opposition in this case, dated February 21, 1992, summary judgment dismissing Easley's Jones Act claim was likewise consistent with a long line of prior decisions in several circuits denying seaman status to shore-based workers with only intermittent relationships to vessels. *See Griffith v. Wheeling Pittsburgh Steel Corp.*, 521 F.2d 31 (3rd Cir. 1975), *cert. denied*, 423 U.S. 1054 (1976), holding that a land-based laborer's temporary assignment to work with a barge crew for only three and three-quarter days of his 74 days of employment did not satisfy the requirement of a permanent connection to a vessel and, as a matter of law, did not give rise to seaman status; *Whittington v. Sewer Construction Co.*, 541 F.2d 427 (4th Cir. 1976), holding that a shore-based worker who had incidental and intermittent duties aboard a barge moored to a bridge was not a seaman; *Lormand v. Superior Oil Co.*, 845 F.2d 536 (5th Cir. 1987), *cert. denied*, 484 U.S. 1031 (1988), granting summary judgment denying seaman status to a welder who performed only 14 percent of his work activity aboard vessels; *Stokes v. B.T. Oilfield Services, Inc.*, 617 F.2d 1205 (5th Cir. 1980), granting summary judgment denying seaman status to a land-based roustabout who lacked permanent attachment to a vessel, where in his 28 work days before his accident aboard a barge, he had spent 27 days in land-based employment and only one day at sea; *Fazio v. Lykes Bros. S.S. Co.*, 567 F.2d 301 (5th Cir. 1978), granting summary judgment denying seaman status to a shore gang worker who performed no permanent duties aboard vessels, though from time to time he did perform transitory vessel repair jobs; *Labit v. Carey Salt Co.*, 421 F.2d 1333 (5th Cir. 1970), granting summary judgment denying the Jones Act claim of a shore-based worker who loaded vessels with bulk salt and who only occasionally and sporadically operated a power boat to position the vessel for loading; *Miller v. Patton-Tully Transportation Co.*, 851 F.2d 202 (8th Cir. 1988), denying seaman status to a bulldozer operator who spent only one-third of his time on water, which was not "substantial" enough a part of his work to qualify him as a seaman; *Bullis v. Twentieth Century-Fox Film Corp.*, 474 F.2d 392 (9th Cir. 1973), granting summary judgment denying seaman status to off-duty servicemen acting as temporary or transitory extras on a vessel during filming of a motion picture.

was a land-based shipyard mechanic who was neither permanently attached to a vessel nor performed a substantial part of his work on a vessel. Accordingly, Petitioner failed to carry his burden of proving seaman status. Consistent with this Court's jurisprudence, the district court properly granted summary judgment dismissing his Jones Act claims, and the Fifth Circuit, both initially and on remand, correctly affirmed the district court's decision. For these reasons, Petitioner's application for a writ of certiorari should be rejected.

CONCLUSION

The decisions of the district court and the Fifth Circuit holding that Petitioner is not entitled to bring a negligence action against his employer either as a ship repairer/shipbuilder under § 905(b) of the LHWCA or as a seaman under the Jones Act were correct. The courts below correctly concluded that § 905(b) precluded this ship repairer from asserting a negligence cause of action against his employer-vessel owner. The Fifth Circuit's mistaken citation to a *pre*-1984 version of § 905(b) was a harmless error and did not affect the correctness of its prior decision or the district court's summary judgment on this issue. The Fifth Circuit also properly followed this Court's decisions in *Gizoni* and *Wilander* and correctly found no reversible error in the district court's summary judgment holding that Easley was not a Jones Act seaman as a matter of law.

Petitioner has presented no meritorious reasons for granting certiorari. The Fifth Circuit's decision on remand does not conflict with any decision of this Court or of any other United States Court of Appeals on the matter presented in this case, nor does this case present any unsettled or important question of law that this Court has not already decided. For the reasons discussed above, Respondent, Southern Shipbuilding Corporation, respectfully submits that this Court should deny Petitioner's request for a writ of certiorari.

Respectfully submitted,

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